THE HONOUABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 17936 of 2006

Date:19-07-2007

Between:

Y.Kristappa and another **.. PETITIONER**

AND

The Prohibition & Excise Commissioner, Hyderabad and two others

.. RESPONDENTS

-

-

ORDER:

The petitioners seek a writ of mandamus to declare the action of the 2nd respondent in issuing re-notification vide G.No.48/2006, dated 24.08.2006 for grant of lease of right to sell Indian made foreign liquor/foreign liquor by shop at Obulapuram village of D.Hirehal mandal, Anantapur District contrary to the earlier notification, dated 27.05.2006, as illegal and arbitrary.

It is the case of the petitioners that the first petitioner is a licence of gazette serial No.162 and the second petitioner is a licensee of the gazette serial No.161 of the gazette notification issued by the District Collector, Anantapur notifying at D.Hirehal mandal. It is stated that only four shops have been notified in D.Hirehal mandal i.e. three shops at D.Hirehal village and another shop at Gudiselapalli village of D.Hirehal mandal. It is stated that shop No.160 could not be disposed of pursuant to the said public notification and therefore, as per Rule 21 of A.P. Excise (Lease of Right of Selling by Shops and Conditions of Licence) Rules, 2005 (for short 'the Rules'), the A.P.B.C.L. which is authorized to open the outlet for the sale of IML in respect of the undisbursed shop was carrying on business but thereafter the said shop No.160 was shifted to some other village of same D.Hirehal mandal viz. Obulapuram village of D.Hirehal mandal by re-notified gazette notification dated 24.08.2006.

The petitioners question the said re-notification on the ground that once the gazette notification has been made by the District Collector after

approving the fixed number of shops under Rule 4, the Rule 4 does not empower the Commissioner or the auctioning authority to shift the area/location of a shop for which no bid is given in the auction or where a lease already granted is cancelled.

The learned Government Pleader appearing for the respondents submits that the petitioners are not at all the aggrieved persons in the instant case. In fact, the licence in respect of gazette numbers 161 and 162, in fact Gazette Sl.No.160 was initially located at D.Hirehal village and mandal, but whereas by re-notifying the gazette it was shifted to a neighbouring village for the benefit of the petitioners alone and therefore, it cannot be said that the petitioners are aggrieved by the said auction. Though the said contention of the learned counsel for the Government Pleader for the respondents appears to be justified, but as per the judgment of the Division Bench in W.A.No.271 of 2007 dated 01.05.2007 holding that the Rule 4 does not empower the Commissioner or the auctioning authority to shift the area/location of a shop for which no bid is given in the auction or where a lease already granted is cancelled, I am bound by the said judgment of the Division Bench of this Court in view of the violation of the said rule.

Accordingly, the writ petition is allowed.

_____

V.ESWARAIAH, J.

Date:19.07.2007
Ccm